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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 *****

10 WESTERN NATIONAL INSURANCE
GROUP,

11 Plaintiff,

12 v.

13 CARRIE M. HANLON, ESQ., and MORRIS,
14 SULLIVAN, LEMKUL & PITEGOFF, and
DOES 1 through 10 and ROE
15 CORPORATIONS I-X,

16 Defendants.

Case No. 2:17-CV-00825-JCM-CWH

**STIPULATION AND ORDER TO
EXTEND ALL DISCOVERY DEADLINES**
(Fourth Request)

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18 Defendants CARRIE M. HANLON, ESQ. and MORRIS, SULLIVAN, LEMKUL &
19 PITEGOFF, by and through their attorneys of record of the law firm McCORMICK, BARSTOW,
20 SHEPPARD, WAYTE & CARRUTH LLP, and Plaintiff WESTERN NATIONAL INSURANCE
21 GROUP, by and through attorneys of record of the law firm OLSON, CANNON, GORMLEY,
22 ANGULO, & STOBERSKI, hereby file this Stipulation and Order to Extend All Discovery Deadlines
23 (Fourth Request) for 60 days.

24 **I. DISCOVERY COMPLETED BY THE PARTIES**

25 The parties served their FRCP 26(A) Initial Disclosures. The initial disclosures contained
26 numerous documents with voluminous page counts. Due to the amount of relevant documents
27 generated by the underlying case, Plaintiff's initial production alone totaled approximately 2,967

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1 pages. Since that time, significant additional documentation has been provided by Plaintiffs, as well as
2 Defendants.

3 Plaintiff has propounded Interrogatories, Requests for Production of Documents, and Requests
4 for Admissions on all Defendants. Responses were originally due on September 8, 2017. Due to the
5 volume of the requests (there were nearly 75 Requests for Admission propounded on each Defendant)
6 and an ongoing issue as to the amount of privileged material, more time was needed to adequately
7 respond. Responses to this discovery were provided on October 10, 2017.

8 Defendants propounded written discovery in the form of Interrogatories, Requests for
9 Production and Requests for Admission to Plaintiffs on October 11, 2017. This written discovery was
10 propounded following receipt and review of the extensive initial document disclosures by Plaintiff.
11 Plaintiff's counsel's previously-discussed medical procedures and family commitments required him
12 to be unavailable and out of the office for all of November, 2017. Defendants granted additional time
13 to respond to the written discovery, and received the written responses on December 8, 2017. Plaintiff
14 also served its First Supplemental FRCP 26 Disclosure on December 5, 2017.

15 Defendants served subpoenas and custodian of records deposition notices for the law firms of
16 Phillips, Spallas & Angstadt (PSA) and the Law Offices of Cory Hilton. PSA law firm did not
17 respond to the subpoena, and a notice of non-appearance of the custodian of records was taken on
18 September 13, 2017. Defendants did receive documents per the subpoena later that day. There are
19 still some lingering issues regarding certain objections to the subpoena. It is possible that this matter
20 may need to come before the Court in a motion to compel, however in the interest of economy,
21 Defendants have agreed to hold off on this particular matter until documents from Cory Hilton have
22 been produced.

23 Defendants have granted Cory Hilton several extensions to provide his firm's correspondence
24 file relating to the *Herbster v. Classic Landscapes* litigation in the Eighth Judicial District Court. In
25 our previous stipulation (Dkt. # 34), we explained the issues and difficulties surrounding the
26 production of these documents. After significant deliberation and meet and confer efforts, Morris
27 Sullivan was able to finally obtain the requested documentation. The production included a total of

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23,320 pages of documents that were produced in Defendants Second Supplemental Rule 26 Production on March 27, 2018. There are no further issues regarding Mr. Hilton's file.

The depositions of Plaintiff's witnesses Lorraine Walsh and Maggie Kirschner took place on March 15th and 16th, respectively. The deposition of Plaintiff's witness/representative John Buckley was also scheduled to take place on March 16th, however due to the duration of Ms. Kirschner's deposition, Mr. Buckley was unable to proceed on the date scheduled. The parties agreed to move the deposition to a time more agreeable to everyone's schedule.

II. DISCOVERY WHICH REMAINS TO BE COMPLETED

The following depositions of the parties remain:

- 1) Plaintiff- John Buckley
- 2) Defendants- Carrie Hanlon
- 3) Defendants- Jeff Pitegoff
- 4) Defendants- Chris Turtzo

In addition, several non-party witnesses are also needed. These include witnesses from the underlying *Herbster v. Classic Landscape* action, Tammy Herbster's treating physicians and representatives of Classic Landscapes. The parties anticipate a total of fifteen (15) witnesses for deposition. Expert discovery will also need to be completed.

Finally, the Parties understand that their Joint Interim Status Report is currently due on July 27, 2018. The parties have included a new due date for the Joint Interim Status Report consistent with LR 26-3.

III. REASONS WHY SUCH REMAINING DISCOVERY WAS NOT COMPLETED WITHIN THE TIME LIMIT OF THE EXISTING DISCOVERY DEADLINE

There reasons there is still outstanding discovery to be completed is that the parties have been working to secure a mediator, and more pertinently, a mediation date. Although the parties had anticipated mediation going forward in June 2018, the mediator that the parties agreed upon became unavailable until December 2018. The parties have since agreed on a new mediator, Floyd A. Hale, Esq. Although a mediation date has not been set, the parties expect to receive Mr. Hale's availability by Tuesday, July 31, 2018. The specific mediation timeline will be based primarily on the mediator's

1 availability. Due to the complicated nature of this particular litigation, the parties are taking their time
2 to ensure that they locate the most appropriate mediator for this action.

3 These mediation discussions have also led to the parties' mutual understanding that a majority
4 of the remaining discovery should be put on hold in order to conserve litigation costs with an eye
5 towards settlement. This includes not only the depositions above, but also the expert discovery. Due
6 to the considerable costs involved in expert discovery, the parties would like to reserve those potential
7 costs towards a possible settlement. As such, the parties are seeking an additional 60 days so that
8 mediation efforts may be completed.

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10 **IV. GOOD CAUSE AND EXCUSABLE NEGLIGENCE EXIST TO GRANT REQUESTED**
11 **EXTENSION**

12 The instant stipulation comes fewer than 21 days before the expiration of the initial expert
13 disclosure deadline. Local Rule 26-4 requires that stipulations coming fewer than 21 days before the
14 expiration of a deadline demonstrate excusable neglect. The parties respectfully submit to the Court
15 that the timing of stipulation was the result of good faith efforts from the parties to narrow down the
16 scope of the litigation and move this matter towards mediation. The parties also contend that this
17 requested extension meets the facts outlined for excusable neglect under *Pioneer Inv. Services Co. v.*
18 *Brunswick Associates Ltd.*, 507 U.S. 380, 395 (1993).

19 First, there is no delay or prejudice to any party as this is a joint request based on mutual desire
20 to place this matter into mediation. The parties have been diligently working towards obtaining all
21 necessary information to evaluate the case, and have developed a good working relationship. Second,
22 the delay in requesting this extension comes from the recent difficulties in coordinating lead counsels'
23 respective schedules, locating and coordinating out-of-state depositions, obtaining approval from
24 clients on potential mediation and attempting to locate a viable mediator for this type of complex legal
25 malpractice action. Counsel for the parties have been in discussions regarding this stipulation since
26 March 15th, following the depositions of Plaintiff's representatives. It took several weeks to come to
27 terms on the remaining issues and determine what discovery, if any, needed to be completed before a
28 good faith mediation with potential for case resolution could be had.

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1 The delay was compounded based on the original mediator's scheduling conflicts. The parties
2 had anticipated the mediation occurring in June 2018. Due to the mediator's conflicts, the parties had
3 to begin the process of selecting a mediator again. The parties have reached an agreement with a new
4 mediator and hope to have dates selected shortly after receiving the mediator's availability on July 31,
5 2018.

6 Additionally, the Plaintiff's Counsel anticipates proceeding with a lengthy trial throughout
7 much of the month of August. This trial will take up a significant portion of Plaintiff's counsel's time,
8 thus 60 days are necessary to adequately meet all discovery obligations in this case.

9 Finally, both parties acted in good faith, and continue to act in good faith. The parties hope to
10 mediate this matter as soon as possible. The parties have devoted a significant amount of resources to
11 litigating this matter and will continue to do so until it is resolved. Accordingly, the parties agree that
12 good cause exists to extend the discovery dates by 60 days.

13 **V. PROPOSED SCHEDULE FOR COMPLETION OF ALL REMAINING DISCOVERY**

14 A. ESTIMATE OF TIME REQUIRED FOR DISCOVERY: Pursuant to Local Rule 26-
15 1(e)(1), and with the Court's approval, discovery in this action shall be completed on or before
16 **November 26, 2018.**

17 B. JOINT INTERIM STATUS REPORT: Unless otherwise stated herein, and the Court
18 so orders, the Joint Interim Status Report shall be submitted sixty (60) days prior to the close of
19 discovery, but not later than **September 25, 2018**, in accordance with LR 26-3.

20 C. FED R. CIV. P. 26(a)(2) DISCLOSURES (EXPERTS): Unless otherwise stated
21 herein, and the Court so orders, disclosures identifying experts shall be made sixty (60) days prior to
22 the close of discovery, but not later than **September 25, 2018** and disclosures respecting rebuttal
23 experts shall be made thirty (30) days after the initial disclosure of experts, but not later than **October**
24 **26, 2018.**

25 D. DISPOSITIVE MOTIONS: Unless otherwise stated herein, and the Court so orders,
26 the date for filing dispositive motions shall be thirty (30) days after the discovery cut-off date, but not
27 later than **December 28, 2018.**

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1 E. PRETRIAL ORDER: Unless otherwise stated herein, and the Court so orders, the joint
2 pretrial order shall be filed thirty (30) days after the date set for filing dispositive motions, but not later
3 than **January 28, 2019**. In the event dispositive motions are filed, the date for filing the joint pretrial
4 order shall be suspended until thirty (30) days after decision on the dispositive motions, or upon
5 further order of the Court.

6 F. FED. R. CIV. P. 26(a)(3) DISCLOSURES: Unless otherwise stated herein, and the
7 Court so orders, the disclosures required by Fed. R. Civ. P. 26(a)(3) and any objections thereto shall
8 be included in the pretrial order.

9 DATED this 27th day of July, 2018

10 McCORMICK, BARSTOW, SHEPPARD,
11 WAYTE & CARRUTH LLP

12 By /s/ Dylan P. Todd
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17 DATED this 27th day of July, 2018

18 OLSON, CANNON, GORMLEY,
19 ANGULO & STOBERSKI

20 By /s/ Peter M. Angulo
21 Peter M. Angulo, Esq.
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23 LAS VEGAS, NEVADA 89129
24 702-384-4012
25 Attorneys for Western National Insurance Group

26 IT IS SO ORDERED.

27 DATED this 30 day of July, 2018

28 
UNITED STATES MAGISTRATE JUDGE

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 27th day of July, 2018, a true and correct copy of **STIPULATION**
3 **AND ORDER TO EXTEND ALL DISCOVERY DEADLINES (Third Request)** was served via
4 the United States District Court CM/ECF system on all parties or persons requiring notice.

5 **SERVICE LIST**

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